

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 23 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0129-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
DARNELL JOSEPH LEWIS,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20054535

Honorable Michael J. Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Darnell Lewis

Buckeye
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Petitioner Darnell Lewis seeks review of the trial court's dismissal of his notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. Lewis was

tried by a jury, convicted of first-degree murder, and sentenced to life in prison without possibility of parole for twenty-five years. We affirmed his convictions and sentences on appeal. *State v. Lewis*, No. 2 CA-CR 2007-0018 (memorandum decision filed Mar. 17, 2008).

¶2 Lewis filed a timely notice of post-conviction relief and the trial court appointed counsel to represent him in his Rule 32 proceeding. After appointed counsel notified the court he could find no arguable basis for Rule 32 relief, the court granted an extension of time for Lewis to file a pro se petition.

¶3 As described in the trial court's order dismissing Lewis's notice, Lewis subsequently requested and received additional extensions of time and ultimately had been granted almost ten months to prepare and file his pro se petition. On January 28, 2010, the day before the extended due date for his petition, Lewis filed another request for an extension of time. In it, he sought an additional extension because he had been moved to a different prison unit and his personal papers had not yet been transferred to him, he was acting without legal assistance, and he had limited access to a library. The court denied Lewis's request and dismissed his Rule 32 notice, finding he had failed to make a "showing of extraordinary circumstances," required by Rule 32.4(c)(2) for successive extensions of time to file a petition for post-conviction relief. The court subsequently denied Lewis's motion for reconsideration of the ruling, and Lewis seeks our review of that denial as well as the dismissal of his notice of post-conviction relief.

¶4 We review a trial court's denial of post-conviction relief for an abuse of discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). Lewis

argues he should be permitted to file a petition for post-conviction relief and restates the reasons he had requested an additional extension of time to do so. But the court's orders clearly set forth the history of these proceedings and the correct legal standard to be applied, and we find no fault with the court's analysis. We need not repeat that analysis here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶5 Lewis has failed to sustain his burden of establishing the trial court abused its discretion in summarily dismissing his notice of post-conviction relief. Accordingly, although we grant review, we deny relief.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge